

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 209 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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COMMISSIONER OF INCOME-TAX

Versus

RAIPUR MANUFACTURING CO. LTD.

Appearance:

1. INCOME TAX REFERENCE No. 209 of 1986
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1
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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 14/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference, at the instance of the revenue, in all five questions have been referred for the opinion of this Court. The first two questions are in respect of assessment years 1981-82 to 1983-84, the next two questions are for assessment year 1981-82 and the last question is for the assessment year 1983-84. We take up the questions ad-seriatim.

2. We have heard Mr. B.B. Naik, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

A.Ys. 1981-82 to 1983-84:

3. Question No.1 common for the three Assessment Years is as under:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the expenditure on medical benefits, house rent allowance and personal Accident Insurance Premium, of benefit to the Managing Directors should not be considered for calculating the disallowance under sec. 40 (c) of the Income Tax Act, 1961 ?"

As far as the controversy about the expenditure on medical benefits and personal accident insurance premium for the benefit of the Managing Directors of the assessee company is concerned, the controversy in respect of both these items is concluded against the assessee in the decisions of this Court in Gujarat Steel Tubes vs. CIT 210 ITR 358 and CIT vs. Ambica Mills Ltd. 236 ITR 921. We accordingly answer this part of the question in the negative i.e. in favour of the revenue and against the assessee.

As far as house rent allowance is concerned, in view of the decision of the Apex Court in CIT vs. Mafatlal Gangabhai & Co. P. Ltd. 219 ITR 644, we answer this part of the question in the affirmative i.e. in favour of the assessee and against the revenue.

4. Coming to question No.2 for all the three assessment years, the same is as under:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that cash payment of house rent allowance to employees should not be considered for the disallowance under section 40 A (5) of

the Income Tax Act, 1961 ?"

In view of the principles laid down by the Apex Court in CIT vs. Mafatlal Gangabhai & Co. P. Ltd. 219 ITR 644, we hold that the Appellate Tribunal was right in holding that cash payment of house rent allowance to employees should not be considered for disallowance under section 40 A (5) of the Income Tax Act, 1961. We accordingly answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

A.Y. 1981-82:

5. Coming to two questions for assessment year 1981-82 only, the first question is as under:

"Whether, the Appellate Tribunal is right in law and on facts, in deleting the disallowance of royalty for trade mark "Tebilised" for the assessment year 1981-82?"

At the hearing of this reference, Mr. B.B. Naik learned counsel for the revenue fairly states that the controversy raised herein is concluded in favour of the assessee as per the decision of this Court in CIT vs. Ashoka Mills Ltd. 218 ITR 526. We accordingly answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

6. Question No.2 for assessment year 1981-82 only, is as under:

"Whether, the Appellate Tribunal is right in law and on facts of the case in allowing contribution of Rs.1,00,000/- to CKNL Memorial Trust as revenue expenditure under section 37 of the Income Tax Act, 1961 ?"

It appears that the facts in relation to this question are, as stated in the assessee company's letter dated 16-8-1983 pointed out in the assessment order, as under:-

"On the death of S/Shri Chimanbhai, Kasturbhai and Narottambhai, the labourers wanted to abstain from duty as a mark of respect but the management persuaded the workers to keep up the production and it assured them that the management in turn would do something for the welfare of the workers. The workers, therefore, kept the factory working on those days. During the

accounting year under consideration, the Textile labour Association reminded the company of the assurances and demanded compliance. In order to keep industrial peace and harmony and to avoid industrial unrest, the company entered into an agreement with the T.L.A. and made the aforesaid donation.

We are of the view that the Tribunal was right in allowing the contribution of Rs.1,00,000/to CKNL Memorial Trust as revenue expenditure under section 37 of the Income Tax Act, 1961.

We accordingly answer the question in the affirmative i.e in favour of the assessee and against the revenue.

A.Y. 1983-84:

7. Coming to the solitary question for assessment year 1983-84 only, the same is as under:

"Whether, the Appellate Tribunal is right in law and on facts in granting the allowance of deduction under section 80 HHC on Export turnover for the assessment year 1983-84 ?"

The controversy raised herein has very recently been considered by this Court in ITR No. 286 of 1987 and by our decision dated 11-9-2001 we have upheld the similar view taken by the Tribunal in that case for granting the allowance of deduction under section 80 HHC on export turnover for the assessment year 1983-84, by holding that for availing of benefit of section 80 HHC it is not necessary that the assessee should have earned the income from export in the relevant assessment year and that deduction is granted on a portion of the export turnover as such, irrespective of the fact whether the assessee had made any profit in the assessment year. We accordingly answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

8. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J)

(D.A. Mehta, J)

zgs/-

